

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH BROWN,

Defendant-Appellant.

UNPUBLISHED

August 2, 2005

No. 252506

Wayne Circuit Court

LC No. 03-008279-01

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs,* JJ.

PER CURIAM.

Defendant was charged with assault with intent to murder, MCL 750.83. Following a bench trial, he was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, for which he was sentenced to three to ten years in prison. Defendant appeals his conviction as of right, and we affirm.

Defendant's sole claim on appeal is that the prosecutor failed to disprove that he acted in lawful self-defense. When a defendant uses deadly force, the test for determining whether he acted in lawful self-defense has three parts: (1) the defendant honestly and reasonably believed that he was in danger; (2) the danger he feared was serious bodily harm or death; and (3) the action taken by the defendant appeared at the time to be immediately necessary, *i.e.*, the defendant could only utilize the amount of force necessary to defend himself. CJI2d 7.15; *People v Heflin*, 434 Mich 482, 502, 508; 456 NW2d 10 (1990); *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985).

"The necessity element of self-defense normally requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat." *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). If an attack can be safely avoided, the use of deadly force is not necessary. *Id.* at 129. However, a defendant is not "required to retreat from a sudden, fierce, and violent attack" or "from an attacker who he reasonably believes is about to use a deadly weapon." Under such circumstances, as long as the defendant honestly and reasonably believes that it is necessary to exercise deadly force in self-defense, "he may stand his ground and meet force with force." *Id.* at 119. Regardless of the circumstances, if the defendant is attacked in his own home, he "is *never* required to retreat where it is otherwise necessary to exercise deadly

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

force in self-defense.” *Id.* at 120 (emphasis in original). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

The evidence established that defendant’s brother-in-law, the victim, a person who instigated fights with defendant, confronted defendant in the upstairs hall and may have threatened to kill him. At the time of the alleged threat, the victim was not armed with a weapon. Defendant went downstairs. Rather than remaining downstairs and ignoring the victim, defendant got a small container of gasoline and then challenged the victim to make good on this threat. The victim charged and hit defendant with his fist. Defendant either threw the gasoline at the victim or lost control of it. In any event, the victim was soaked with the substance when he began hitting defendant with his fists, striking him in the face two or three times. Defendant, who had survived such attacks before, was not in imminent danger of serious bodily harm or death. Rather than using available means of nondeadly force to repel the attack, defendant resorted to deadly force by deliberately setting the victim on fire. Because defendant was not in reasonable fear of danger warranting the use of deadly force, the evidence was sufficient to prove beyond a reasonable doubt that defendant did not act in lawful self-defense.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs